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Tuesday, October 20, 2020

Kellie Correia  
Liberty Mutual Insurance - San Diego, CA  
PO Box 515097  
Los Angeles, CA 90051

Re: My Client: Brandon Wichert  
Insured: Brandon Wichert  
Claim No: 23840824  
DOA: May 15, 2019

Dear Kellie :

I hope this finds you well. I am submitting the instant settlement package for your consideration and attention. As you are aware, based on the circumstances of the accident and the investigation conducted by the investigating office and the workers' compensation carrier, liability is moot, and uninsured motorist coverage is triggered as a matter of law. Therefore, I will focus on the relevant issues of damages.

The medical records that we have in our possession are enclosed and the medical expenses paid by the workers' compensation carrier are contained in the itemized printout that is also enclosed.

As you are aware this was a serious accident that resulted in permanent injuries to Brandon. His injuries, treatment and impairment from the injuries are discussed by Dr. Litchfield in his April 8, 2020 report (enclosed), a portion depicted below:

Mr. Wichert is a 31-year-old male who sustained these injuries while employed by Review Windows, Inc. On May 15, 2019, Mr. Wichert suffered **multiple severe injuries** when he was a passenger involved in a work-related motor vehicle accident. He was transported to Skyline Medical Center where multiple CT scans were obtained **revealing a comminuted and displaced left zygomatic/maxillary complex fracture, and fracture of the left process of the mandible, and a left orbital wall fracture.** He also complained of neck, low back, and left shoulder pain. He underwent an open reduction internal fixation of the left zygomatic arch on May 30, 2019, at Oral and Maxillofacial Associates performed by Dr. James Andrew Wendelken. By his report, he was released, but underwent continued care with Dr. Dustin Rosenhammer regarding his **facial injuries and headaches.**

**EXHIBIT "7"**

At this time, Mr. Wichert suffers from headaches, pain and decreased range of motion in his neck, low back, and left shoulder. His neck pain radiates into his bilateral upper extremities with numbness and tingling, worse on the left. The symptoms in his neck are aggravated with physical activity involving lifting or repetitive movements with the neck.

The pain in his back radiates into his bilateral lower extremities with numbness and tingling, worse on the left. The symptoms in his back are exacerbated with physical activity involving lifting, bending, twisting, and sitting or standing in a static position for prolonged periods. Mr. Wichert suffers from chronic headaches that occur on a regular basis about two to three times a week. These headaches require medication and rest to obtain relief. He still suffers pain and tenderness around his eye socket and jaw. Due to his TMJ dysfunction that he has had to change some aspects of his diet because chewy foods or hard foods cause pain in his jaw. His jaw deviates to the right. The symptoms in his shoulder are aggravated with physical activity involving lifting even lightweight objects or away-from-the-body movements. Due to significant loss of range of motion in his shoulder, he is unable to perform any type of work involving lifting or reaching overhead.

Dr. Litchfield notes that Brandon returned to work despite the significant and severity of his ongoing symptoms, which include significant physical and emotional discomfort. He now has to deal with TMJ symptomatology along with his other lasting conditions. He was unable to work from May 15, 2019 through October 1, 2019. He experienced lost wages in the amount of \$24,000.00.

Unlike in the workers' compensation system which compensates per a statutory rate, which has a current subrogation claim of \$71,782.12, in a personal injury uninsured motorist claim, it is well settled that an injured victim is to be compensated for all detriment proximately caused by a negligent party. It is up to the jury to determine the amount and there are no statutory damage caps.

The jury is to consider medical and hospital expense, pain and suffering, loss of time and earning capacity, permanent injuries or lasting disability and health to mind or person, although not contemplated or foreseen. Haco Drilling Company v Burchette, 346 P.2d 674 (Okla. 1961). Pursuant to 23 O.S. § 61<sup>1</sup>, an injured party is to be placed as nearly as possible in the same situation, which he would have occupied, had the wrong not have occurred. In Oklahoma, a wrongdoer who commits a tort is liable for the whole loss caused by his actions, and any compensation received by the injured party from a collateral source, wholly independent of the wrongdoer, will not lessen the damages recoverable from the wrongdoer. Denco Bus Lines, Inc. v Hargis, 204 Okla. 339, 343, 229 P.2d 560, 564 (1951). Furthermore, the law in Oklahoma clearly holds that "to establish loss of earning capacity there needs only be shown evidence of permanent disability, either total or partial. Jones v. Eppler, Okl., 266 P.2d 451 (1953)." King v. City of Guymon, 523 P.2d 1154, 1159 (Okla. Civ. App. 1974). "The recovery is for injury to the capacity to earn, and not for loss of earnings. Upon this basis an unemployed plaintiff is entitled to recover for loss of earning capacity, despite inability to show specific loss of earnings." Complete Auto Transit, Inc. v. Reese, 1967 OK 73, 425 P.2d 465, 469.

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<sup>1</sup> For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or no." 23 O.S. §61.



In regard to causation of the injuries, such may be proven by either circumstantial or direct evidence. In a negligence case, Plaintiff need only make it appear more probable than not that the injuries he received, either in whole or in part, were caused by the Defendant's negligence. Wego Perforators v Hilligoss, 308 P.2d 113 (Okla. 1064). The issue of damages is left to the judgment of the jury, subjection to correction only if the jury was activated by prejudice or guilty of "abuse and passionate exercise." Chicago, Rock Island & Pacific R. Co. v Hawes 424 P.2d 6 (Okla. 1967); Walton v. Bennett, 376 P.2d 240 (Okla. 19162).

One of the diagnoses for Brandon was a closed head injury, also known as a mild traumatic brain injury (MTBI). Although most patients with MTBI typically improve within 5 days, up to 20% continue to have post-concussive symptoms for an extended period of time following the initial injury. The most common symptom in the days, weeks or months following the initial injury is headache. Other symptoms may include nausea, fatigue, blurred vision, and sleep disturbances. Cognitive symptoms are also experienced in patients who sustain an MTBI including attention difficulties, memory problems, and executive dysfunction characterized by a lack of focus or a slowing in the thought process. These symptoms typically improve within 2 to 4 weeks following the injury, however, a subset of patients experience prolonged symptoms. Unfortunately, Brandon falls within this subset as the symptoms have persisted.


Thus, the damages that you are required to consider pursuant to Oklahoma law in evaluating his uninsured motorist claim include but are not limited to the following:

Physical pain and suffering, past and future:	\$100,000.00
Mental pain and suffering, past and future:	\$100,000.00
Age:	32
Physical condition immediately before accident:	Excellent
Permanency of injury:	\$75,000.00
Physical impairment:	\$200,000.00
Disfigurement:	\$35,000.00
Impairment of earning capacity:	\$50,000.00
Medical expenses past :	\$22,063.00
Medical expenses future:	\$40,000.00
Lost Wages:	\$24,000.00
Total Damages:	\$696,063.00

Please review this settlement package and respond as soon as possible so that your insured, Brandon, can resolve his claim. I look forward to working with you in resolving this matter. If you have any questions, please advise.

Thank you.

Respectfully,



Rick W. Bisher

RB:rb/RB:rb  
Enclosures